IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 150 OF 2003.

WITH CROSS OBJECTION .

The Managing Director,
Goa-IDC, Shree Saraswati Mandir Bldg.,
18th June Road, Panaji, Goa. .... Appellant.

VERSUS

1. Shri Sadashiva S.N. Sardessai.

2. Shri Naguesh Shripad N. Sardessai,
both r/o Kurtarkar Classic,
A-2 (T-4) Near Power House,
Aquem, Margao, Goa.

3. The Special Land Acquisition
Officer, Goa-IDC, Shree Saraswati
Mandir Bldg., 18th June, Road,
Panaji, Goa. .... Respondents.

Shri M. S. Sonak, Advocate for the Appellant.

Mrs. A.A. Agni with Mrs. N.N. Narvekar, Advocates for the Respondents No.1 and 2.

CORAM: B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE: 15TH SEPTEMBER, 2004.

ORAL JUDGMENT: (PER MARLAPALLE, J.

Being aggrieved by the Award passed in L.A.C. No.18/2002 by the learned Additional District Judge, South Goa, at Margao on 28.2.2003 this appeal has been filed by the original respondent No.2 i.e. Goa Industrial Development Corporation,

whereas the original claimants at whose instance reference under Section 18 of the Land Acquisition Act, 1894 (The Act, for short) was decided, have also filed Cross Objection.

2. The Government of Goa issued Notification under Section 4 of the Act and it was published on 9.7.1998 for acquiring a huge tract of land near Sanguem town for setting up an Industrial Estate at Xelpem and Cortalim villages. The total acquisition was over 100 acres. So far as the present claimants are concerned, their land admeasuring 80,300 sq.m. from survey nos.17/2 (part) and 16/2 (part) of Xelpem village was covered by the said acquisition. The L.A.O. passed his Award on 14.8.2001 and awarded an amount of Rs.7/- per sq.m. by way of compensation to the land owners. Being aggrieved by this rate fixed by the Land Acquisition Officer, they had moved a reference under S.18 of the Act for enhancement.

3. On behalf of the claimants, the evidence by way of affidavit by Claimant No.1 Sadashiv was placed on record along with two sale instances (Exhs.17 and 18) and a copy of the Award passed by the L.A.O. in Case No. SLAO/SIP/359 (Exh.19) were placed on record. The affiant was cross-examined by the respondents. The claimants had stated before the Reference Court that as per the sale instances at Exhs.17 and 18 the market value of the subject land was about Rs.30/- per sq.m. in 1984, whereas in the Award at Exh.19 the value determined was Rs.30/- per sq.m. for the same land i.e. Survey

No.17/2 (part). The Reference Court accepted the market value determined by the award (Exh.19) but as of 18.7.1991 gave an escalation of 10% of each year till 1998 and held that the market value would come at Rs.23.40 per sq.m. As the land acquired under the Award (Exh.19) admeasuring only 400 sq.m. and the subject land was a huge tract of 80,300 sq.m., the Reference Court deemed it appropriate to give the value of 10% and thus fixed the market value at Rs.21.06 per sq.m.

4. Mr. Sonak, the learned counsel appearing for the Industrial Development Corporation i.e. original Respondent No.2 has challenged this Award on more than one ground. He submitted that the area from which the subject land has been acquired is one of the most backward areas of Goa State. The market value of the land which was totally agriculture had its own limitations and escalation of 10% was not realistic. He also submitted that once the sale deeds at Exhs.17 and 18 were discarded by the Reference Court and even if the Award at Exh.19 was accepted, there was no material placed on record by the claimants to justify the escalation at the rate of 10%. The learned counsel further submitted that when a huge tract of land is acquired, minimum deduction that is permissible is about 1/3, but in the instant case there was justification to fix the deduction even upto 50% or more.

5. Mrs. Agni, the learned counsel appearing for the original

claimants, on the other hand, in support of her Cross Objection, submitted that the reasons given by the Reference Court in discarding the sale instances at Exhs.17 and 18 cannot be accepted to be correct and even if by relying upon the Award at Exh.19 the Reference Court fixed the market value at Rs.23.04 per sq.m. The further deduction of 10% was not just and proper and the entire land ought to have been valued at Rs.23.04 per sq.m. While opposing the appeal filed by the acquiring body, she further submitted that in any case there is no reason to disturb the Award even if the Cross Objection is discarded by this Court. Both the counsel for the respective parties have referred to a number of decisions of this Court as well as of the Apex Court in support of their respective cases.

6. It is seen from the record that before the Reference Court the claimants had in all three documents, namely two sale instances of 1984 and Award passed by the Land Acquisition Officer at Exh.19. The land covered by all these three documents was from the same survey number and owned by the claimants. The Reference Court accepted the market value at Rs.13/- per sq.m. based on the Award (Exh.19), more so because the said Award was not challenged or no grievance was raised inasmuch as the reference under S.18 of the Act was not sought. Though we are not happy with the reasoning set out by the Reference Court in discarding the sale instances, at Exhs.17 and 18, we find on comparative assessment of the market value, the Reference Court was justified in accepting the Award at Exh.19 as

being the proper index for fixing the market value at Rs.13/- per sq.m. However, that price was awarded in an acquisition which was of 1991and the acquired area was only 400 sq. mtrs. The next question therefore which falls for our consideration is whether the Reference Court was justified in granting 10% escalation.

7. Mrs. Agni, the learned counsel for the claimants referred to the decision in the case of **Special Land Acquisition Officer, BTDA, Bagalkot v. Mohd. Hanif Sahib Bawa Sahib [(2002) 3 S.C.C. 688]** and more particularly the following observations :-

" After due deliberations on the contentions raised by the counsel for the parties, we are of the opinion that on the given facts and circumstances of the present case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for our interference. "

The Reference Court as well as the High Court in that case had accepted 10% per annum for every subsequent year as escalation. We have noted that it was an urban area with developments around. In the instant case it has come on record that the subject land is located at a distance of 3 kms. from Sanguem town and it was acquired for development of industrial estate by the State Government. We do not agree with the submissions of Mr. Sonak that the Reference Court fell in error in granting 10% escalation in the

instant case. The Reference Court is expected to be more familiar with the changing trends in the value of the land and thus we are of the opinion that the escalation granted was not at all exorbitant. There would be no justification in disturbing the escalation fixed by the Reference Court. Under the circumstances, the market value fixed at Rs.23.40 per sq.m. by the Reference Court appears to be just and proper.

8. Now we come to the issue of deductions. Mr. Sonak referred to the decision in **Chimanlal Hargovinddas v. Special Land Acquisition Officer Poona [(1988) 3 S.C.C. 751]** wherein the Apex Court has set down general guidelines for determining the market value of the land under S.23 of the Act. As far as standard deductions are concerned, it is well established that about 30% deductions are found to be just and proper but at the same time the deductions could go even upto 60% depending upon the facts of each case. The Industrial Development Corporation had the liberty to bring on record such evidence as to demonstrate a deduction permissible beyond 30%. This has not been done. There is also no evidence to accept the contentions that the subject land is located in one of the most backward areas. Notwithstanding the failure on the part of the acquiring body to bring on record this evidence to justify more than 30% deduction, admittedly the subject land was being acquired for development of Industrial Estate, which development process would also take into consideration constructions of roads,

drainage, common amenities, water supply, electricity supply including building sub-stations, etc. The plot of land would not be sold unless all these developments were to be physically available and therefore there would be a gestation period. This would certainly justify a deduction of 30%. In the case of **Land Acquisition Officer Revenue Divisional Officer, Chittor v. L. Kamalamma (Smt) Dead by LRS and Others [(1998 2 S.C.C. 385], the Apex Court stated thus :-**

" **Further** when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed. "

In the case of **Chimanlal Hargovinddas** (supra) the Apex Court observed thus :-

" It is common knowledge that when a large block of land is required to be valued, appropriate deductions has to be made for setting aside land for carving out roads, leaving open spaces and plotting out smaller plots suitable for construction of buildings. The

extent of the area required to be set apart in this connection has to be assessed by the Court having regard to the shape, size and situation of the concerned block of land etc. There cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially question of facts depending on the facts and circumstances of each case. It does not involve drawing upon any principle of law. It cannot be said that the High Court has committed any error in forming the opinion that having regard to the facts and circumstances of the case 25 per cent deduction was required to be made in this connection. The High Court cannot be faulted on this score. "

9. In the instant case, we are of the considered opinion that the deduction of 30% would be appropriate and therefore 30% area from the acquired area of 80,300 sq.m. ought to be deducted. After deducting this 30%, the balance land of 70% is required to be compensated at Rs.23.40 per sq.m.

10. We therefore allow the appeal as well as the Cross Objection partly and fix the market value of the subject land at Rs.23.40 per sq.m. and by deducting 30% of the land. The total area after deduction would be 80,300 - 24,090 i.e. 56,210 sq.mtrs. on which

compensation at Rs.23.40 per sq. mtr. shall be payable. The Registry to issue the decree accordingly.

B. H. MARLAPALLE, J.

sl. **N. A. BRITTO, J.**